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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CC Docket No. 96-187
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	

REPLY OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services hereby submits its Reply to the Comments filed in the above-captioned proceeding. ALTS filed initial comments in this proceeding on October 9, 1996.

In its initial comments ALTS urged the Commission not to interpret Section 402(b)(1)(A) of the Telecommunications Act of 1996, 47 U.S.C. § 204(a)(3), so broadly as to undermine the ability of the Commission to protect the public should unlawful or anti-competitive tariffs be filed. ALTS limits its response to a rebuttal of the Comments filed in this proceeding that advocate a completely emasculated Commission with respect to its ability and authority to review tariffs that have become effective and to protect the public interest.

ALTS agrees with USTA that "streamlined regulation is in the public interest" and that "Congress clearly intended Section 402(a)(3) to provide some regulatory relief for LECs by

streamlining the tariff filing process."[1] Where ALTS differs with many of the incumbent local exchange carriers is in the extent to which Congress intended to deprive the Commission of its long-standing authority to control unreasonable tariff filings.

The most important legal issue raised in the Notice of Proposed Rulemaking is the meaning of the words "deemed lawful." The incumbent local exchange carriers argue that any tariff that becomes effective under Section 204(a)(3) is "adjudged lawful by operation of the statute."[2] In effect these companies argue that no matter how blatantly unlawful a filing may be, if the Commission or the public doesn't recognize the problem within the very tight time frames allowed in the statute, there is nothing that can be done about it and customers and competitors must simply accept the tariff.[3] Under the incumbent LECs interpretation of the Act, customers or competitors have virtually no recourse against the effective tariff. All of the incumbent LECs argue that even if a tariffed rate is subsequently found unlawful, customers would not be eligible for refunds.

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[1] Comments of USTA at 1.

[2] BellSouth at 1. U S West and USTA argue that the 1996 Act deems a tariff to be lawful upon filing rather than upon effectiveness. Comments of U S West at ii; Comments of USTA at 3.

[3] In fact, several Commenters argue that this should be the case even when the filings would need a waiver of the Commission's Rules. See Comments of GTE at 8.

While the incumbent LECs differ on the actions that the Commission could take if it believes that an effective tariff is unlawful, some of the incumbent LECs argue that once the tariff becomes effective, the Commission is precluded from taking any action other than prescription of a new rate pursuant to Section 205.[4]

There is absolutely no evidence that Congress intended to do anything other than streamline the tariff filing process. Clearly, under the generally accepted rules of statutory construction, the words "deemed lawful" cannot be disregarded or written out of the Act. They must be given some effect. But to argue, as the incumbent carriers do, that the two words "deemed lawful" evidences an intention by Congress to set up an entirely new tariff regime that would overturn long-standing practice, stretches credulity. If Congress had intended to overturn established precedent, one would expect there to be something in the legislative history explaining Congress' action. ALTS is aware of nothing that would support such a change. One must ask the question whether Congress possibly could have intended to

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[4] BellSouth, for example, states that once the tariff has become effective "there is nothing left for the Commission to review. The filing's lawfulness is a legislative determination made by Congress which the Commission cannot disturb." U S West argues that the "statutory language in the 1996 Act therefore limits any subsequent Commission review of a Section 208 complaint challenging a local exchange carrier tariff." U S West at 4. "Post-effective tariff review is limited to the procedural options available to the Commission under section 205." Id. at 12.

sanction tariffs that it had not seen and for which there is no determination, for example, of a range of reasonableness. Congress cannot, and presumably would not have wanted, to make a determination on an unknown filing. In addition, it is highly unlikely that Congress would want to immunize a carrier who filed such a tariff from the possibility of having to refund unreasonable rates that have been collected.

The incumbent LECs seem to argue that it is highly unlikely that they would ever file an unlawful rate, because competition will determine and control tariff filings and the rates contained therein.[5] There may be a time in the future when competition has developed to the point at which the incumbent local exchange carriers' service offerings and rates are sufficiently subject to competitive pressures that no review of the tariffs is necessary to prevent consumer injury or anti-competitive abuse, but that time has not yet come.

In attempting to discern the intent of Congress, the Commission should also interpret Section 204(a)(3) in the context of the entire Telecommunications Act of 1996. Congress recognized that a competitive deregualted marketplace would have to develop over time. Therefore, it gave to the Commission the tools it would need to ensure that the transition from a regulated monopoly structure to a competitive structure could be accomplished over time. Congress recognized that a phase in of

[5] See Comments of Pacific Telesis at 7.

deregulatory actions would be necessary as competition developed. Therefore, Congress gave the Commission the power to revise its regulations and forebear from enforcing any provision of the Communications Act when it makes a finding that the "enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations . . . are just and reasonable and not unjustly or unreasonably discriminatory." No such finding has been made here. Because competitive forces have not developed to the point at which the Commission can conclude that competitive forces will ensure reasonable and lawful tariffs, it would be bad public policy to read Section 204(a)(3) as limiting the Commission's ability to review, either before or after effectiveness, any tariff filing. It is also premature for the Commission to take any action that would emasculate its authority to protect the public against unlawful tariffs.

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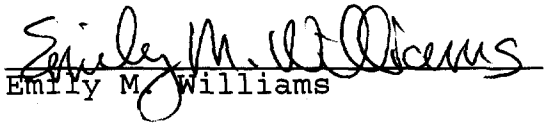
CERTIFICATE OF SERVICE

I hereby certify that the foregoing reply of the Association for Local Telecommunications Services was served October 24, 1996 on the following persons by hand service as indicated or by first class U.S. Mail, postage prepaid.



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